

Service Date: November 2, 1989

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Burlington Northern Railroad)	
Company to discontinue its agency)	DOCKET NO. T-9297
operations at Scobey/Four Buttes,)	
Montana.)	ORDER NO. 5954

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Murphy, Robinson, Heckathorn & Phillips, P.O. Box 759, Kalispell,
Montana 59903-0759

FOR THE COMMISSION:

Timothy R. Baker, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner & Hearing Examiner

BACKGROUND

Burlington Northern Railroad Company (BN) applied to the Montana Public Service Commission (Commission) on August 24, 1988 for authority to discontinue its agency operations at Scobey/Four Buttes, Montana.

The Commission noticed BN's application and a public hearing was held on November 14, 1988 at the Nemont Friendship Room, Nemont Telephone Coop Building, Scobey, Montana.

At the conclusion of the hearing the parties stipulated to a final order.

SUMMARY OF TESTIMONY

Testimony of Applicant

Testifying for BN were Charles Scheibe, Les Schefil-bine, James Whitmeyer and William Allbright.

Charles Scheibe. Mr. Scheibe is the Manager of Data Quality located in St. Paul, Minnesota. He explained that under BN's proposal, a shipper wanting service out of Scobey/Four Buttes would contact the Centralized Billing Center (CBC) in Great Falls to order a railroad car. The customer would provide the CBC with the necessary relevant information, such as commodity, destination and shipping date. The CBC places an order with a BN car distributor, who sends a car to the customer's loading facility. BN will pick up the car when it is loaded.

The CBC operates 24 hours a day, 7 days a week. It is a computerized operation that ties into the entire BN system. The customer prepares the bill of lading, and can call the CBC toll-free. There are three options for processing the bill of lading. The customer can mail the bill of lading to Great Falls for processing, may use a power of attorney for BN to sign the bill of lading, or may put the bill of lading into a locked box at the point of pickup. The CBC is equipped to handle

both the bill of lading and way bills (a way bill is an internal document that describes the destination of the car).

James Whitmeyer. Mr. Whitmeyer is the Division Agent at the CBC facility located in Great Falls, Montana. Mr. Whitmeyer testified that there are eight clerks assigned to Great Falls. There are four clerks assigned to the day shift, three on the evening shift, and one on the night shift. Mr. Whitmeyer also testified that he had conducted a shipper meeting in the Scobey/Four Buttes area to inform shippers of the CBC use as well as answer any questions they may have. He stated that the shippers which were contacted did not oppose the application.

The agent at Scobey/Four Buttes retired in June, 1988, and this application was subsequently filed in August, 1988. The opening has been advertised, but no one has sought the position.

Les Schefilbine. Mr. Schefilbine is the trainmaster stationed in Glasgow. He testified that train service on the Opheim branch is a scheduled local on Tuesday as far as Scobey, returning on Wednesday. Mr. Schefilbine testified that the branch line is 150 miles in length, from Bainville to Opheim, with an operating speed of 35 mph to Scobey and some slow order track beyond to Opheim. He added that if required, an unscheduled trip can be made up the Opheim branch.

William Allbright. Mr. Allbright, a senior cost analyst for BN, sponsored Exhibit B -- Accounting Exhibits for Proposal to Discontinue the dualized agency at Scobey/Four Buttes, Montana. Exhibit B shows the following cars received and forwarded at Scobey/Four Buttes in 1985, 1986, 1987 and the first nine months of 1988.

Cars Received and Forwarded at Scobey/Four Buttes

	1985	1986	1987	Jan-Sept 1988
Received	3	22	18	15
Forwarded	401	424	865	1022
Total	404	446	883	1037

Exhibit B also contained net revenues or losses for the Scobey/ Four Buttes agency calculated using the Belt/Carter and the BN formulas.

		Belt/Carter Formula	BN Formula
1985	\$192,059	\$ 67,527	
1986	129,448	34,883	
1987	347,466	150,740	
1988 (Jan-Sept)		463,115	219,703

Page 5 of Exhibit B shows the number of units handled and the estimated amount of time consumed performing agency work at the station at Scobey/Four Buttes during 1987. This schedule shows a total time worked of 2,000 hours and a total time required for agency work of 354 hours. Based on BN's estimation of the time required to do a unit of agency work, and the actual number of units of work handled, the agent at Scobey/Four Buttes spent 23 percent of his time on agency work and travel and 77 percent of his time was available for other work.

Testimony of Public Witnesses

Mr. James Mular, legislative director of the Transportation Communications Union (TCU) testified in opposition to the closure of the Scobey/Four Buttes agency. He testified that he believes that public convenience and necessity require the Scobey/Four Buttes agency to remain open. Using the Belt/Carter formula, the agency is profitable. In his opinion, the lack of shipper testimony does not prove that public convenience and necessity do not require the Scobey/Four Buttes agency. The railroad has introduced no evidence to show that the Great Falls agency is capable of handling the increased work from Scobey/Four Buttes, and has produced no evidence that the Great Falls CBC can adequately meet shipper needs.

Mr. Mular also testified that there currently is no agent at the Scobey/Four Buttes depot, because BN has not been able to fill the position. Mr. Mular stated that under pertinent operating agreements, BN could have hired and trained a temporary employee to fill the position. Accordingly, the Commission should impose sanctions against BN.

Mr. Mular requested the Commission to give employee wage protection under < 69-14-1001, MCA. He also pointed out that BN's Exhibit B indicates that during 1988, when no agent was present, a total of \$6,280 in demurrage was charged to shippers.

Mr. Joe Metzger, Scobey, Montana, appeared and testified. Mr. Metzger is the Mayor of Scobey, and is not a shipper. He testified that BN is losing its identify in the community, and that the agent maintains the railroad's local presence. He believes that the agent is necessary to help shippers with rail service, but added that the shippers are receiving reasonably adequate service.

Mr. Larry Bowler, Scobey, Montana, appeared and testified. Mr. Bowler is the editor/publishes of the Daniels County Leader. Mr. Bowler indicated that he believed that demurrage charges were a problem locally, but added that he was not sure that the local agent could do anything about it. Mr. Bowler is not a shipper.

DISCUSSION, ANALYSIS AND FINDINGS

Under < 69-14-202(2), MCA, the Commission shall authorize the closure, consolidation, or centralization of a facility if a railroad demonstrates to the Commission that the facility is not required for public convenience and necessity. At the time of this application and the hearing on the application, the Commission's test for determining public convenience and necessity

involved weighing the needs of shippers for rail service against the railroad's burden of maintaining agency service.

The 1989 Legislature modified < 69-14-202(2), MCA, by adding the following language:

In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

Since the legislature does not engage in idle acts, the Commission reads this amendment to < 69-14-202, MCA, to reflect the desire of the legislature that the Commission expand its analysis to include impacts of the proposed closure upon persons other than shippers. A review of the legislative history of this amendment supports such an interpretation.

However, the Commission need not determine in this proceeding which test should be applicable: the Scobey/Four Buttes agency should be closed under either standard. No shippers or receivers of freight appeared to testify in opposition to the CBC concept. Further, the public testimony failed to identify any specific problems or negative impacts which could be remedied by retaining the agent at Scobey/Four Buttes. Accordingly, the Commission finds that public convenience and necessity do not require that the Scobey/Four Buttes agency remain open.

Although the record evidence in this docket supports a grant of BN's application, the Commission recognizes that agency service on the Opheim branch generally may be a valuable service to the local communities along that line. While maintenance of a full-time agent may not

be required at many of the communities on the Opheim branch, BN is encouraged to explore other options for providing agency service along this line, such as shared agent service between many, or all of the affected communities.

CONCLUSIONS OF LAW

The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.

The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.

No rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953), cert. den. 346 U.S. 823. The Commission concludes that the public convenience and necessity do not require the continuance of an agency at Scobey/Four Buttes, Montana.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application in Docket No. T-9297 to close the agency at Scobey/Four Buttes, Montana is granted.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall apply < 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are denied.

DONE AND DATED this 5th day of October, 1989 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.